ABSTRACT

When does benefiting from others’ wrongdoing effectively make one a moral accomplice in their evil deeds? If stem cell research lives up to its therapeutic promise, this question (which has previously cropped up in debates over fetal tissue research or the use of Nazi research data) is likely to become a central one for opponents of embryo destruction. I argue that benefiting from wrongdoing is prima facie morally wrong under any of three conditions: (1) when the wrongdoer is one’s agent; (2) when acceptance of benefit directly encourages the repetition of the wrongful deed (even though no agency relationship is involved); and (3) when acceptance of a benefit legitimates a wrongful practice. I conclude by showing that, because of the ways in which most embryonic stem cell lines come into being, people who oppose embryo destruction may use human embryonic stem cells without incurring moral blame.

The year is 2010. Margot and James Smith are considering whether their 11-year-old daughter, Jessica, should undergo a newly available course of stem cell therapy to alleviate or cure her Type-1, juvenile, diabetes. Left untreated, Jessica’s illness may lead to blindness, life threatening circulation problems in her extremities, and, perhaps, early death.

The therapy that Jessica’s parents are contemplating requires careful HLA (immunological compatibility) matching with one of the thousands of human embryonic stem cell (hESC) lines identified in an international registry. These were created over the previous decade from frozen human embryos remaining from infertility procedures and were donated to research or therapy by their progenitors. When a match is made, growth factors will be administered to the cells inducing them to become
pancreatic Beta cells. They will then be infused into Jessica’s liver, where, hopefully, they will begin producing insulin in response to Jessica’s metabolic needs. With luck, the cells will be a close enough match so that they will not be rejected by Jessica’s body.

Although many parents would leap at this health- and life-saving opportunity for their child, the Smiths face a moral quandary. Devout Roman Catholics, they share their church’s view that human life must be regarded as sacred from the moment of conception; they regard the destruction of a human embryo for stem cell research or therapy as equivalent to killing a human being. The Smiths understand that the frozen human embryos used to create hESC lines were slated for destruction. Since no significant market for embryos for adoption exists,1 nothing that they or others chose to do would have prevented the specific embryo suited to Jessica from having been destroyed. Is it not better that such an embryo is at least used to save a life? Nevertheless, the Smiths are also aware of their church’s abiding moral teaching that ‘one should not do evil in order that good may result.’ Would using a stem cell line made this way involve their family in acts they abhor? ‘When,’ they ask themselves, ‘does benefiting from others’ wrongdoing effectively make one a moral accomplice in their evil deeds?’

As this imagined scenario suggests, the question of benefiting from evil is likely to be central to future utilization of hESC technology, though scientific advance may reduce the question’s prominence. Dramatic breakthroughs in the area of adult stem cell research could eliminate the need to use hESC lines in research or therapy. In the opposite direction, therapeutic cloning research may make possible the production of immunologically compatible stem cells from a patient’s own tissues. In that case, a specific nuclear transfer blastocyst would have to be created for each treatment course. Jessica’s parents presumably would have no problems with an adult stem cell transplant for their daughter, but they could not possibly accept cells from a deliberately cloned embryo. Assuming they regard the cloned blastocyst as morally equivalent to an embryo resulting from normal fertilization,2 that would directly involve

1 Some pro-life groups have tried to stimulate embryo adoption, but they have had very limited success, achieving, according to one report, fewer than a dozen adoptions and pregnancies of the tens of thousands of embryos in storage. See Sheryl Gay Stolberg, Clinics Full of Frozen Embryos Offer a New Route to Adoption, New York Times, February 25, 2001, p. A1.

2 In the United States, the Dickey-Wicker Amendment, which prohibits federal funding for research destroying a human embryo, defines the ‘embryo’

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them in authorizing the creation and destruction of a ‘human’ life. In neither case would they primarily face the problem of merely benefiting from others’ wrongdoing. However, so long as stem cell research and therapy makes use of hESC lines produced by others from previously created and then discarded embryos, the Smiths and all those who share their moral views will face the problem of benefiting from acts they regard as evil.

Although many do not share the Smiths’ view that the destruction of early embryonic life is morally wrong, some who do will be active in research that might use hESC lines. Others will function as clinicians employing such lines in therapy. Still more people, like the Smiths, will be in the vast pool of patients or patients’ families that can benefit from hESC therapies. Regardless of our own moral views on embryo destruction, therefore, answers to the question of benefiting from evil will profoundly shape people’s conduct and public policy with regard to stem cell research and therapy.

The moral problem of ‘benefiting from evil’ has received attention in Roman Catholic encyclopedias, manuals of moral theology, or scholarly studies where it is treated under the heading of ‘Cooperation with Evil.’ As such, it receives consideration along with a set of somewhat different questions relating to one’s degree of responsibility for facilitating another person’s wrongdoing. A classic problem encountered in this context is whether a Catholic wife becomes morally culpable by consenting to have sexual intercourse with her husband if he insists on using a condom. Recognizing that a problem like the Smith’s of benefiting from evil involves issues other than immediate involvement or facilitation, the Roman Catholic

as ‘any organism … that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes’ – Public Law 104–99, Section 128, January 26, 1996, 110 Stat 34.


Ethicist M. Cathleen Kaveny recently introduced the phrase ‘Appropriation of Evil’ to accommodate the concerns related to benefiting after the fact from others’ wrongful deeds.\(^5\) Outside of the Roman Catholic tradition, the problem of benefiting from evil received some attention during the 1980s and 90s in connection with the issue of using research results from immoral Nazi medical experimentation.\(^6\) Rather than focusing on these earlier discussions, I propose independently to develop a framework for thinking about ‘benefiting from evil’ problems. With this as background, I will return briefly to Kaveny’s discussion.

Why, morally, should we care if anyone (including ourselves) ‘benefits’ from others’ wrongdoing? What is it that troubles people about making use of materials or knowledge that were brought into being as a result of what they regard as morally wicked or even heinous acts? A concrete example may help here. In the mid-1990s, the medical library at the US National Institutes of Health was found to house on its shelves a multi-volume anatomy text published by SS doctors in Vienna in 1943 and 1944. The text contained color plates showing circumcised male genitals. These plates are now believed to have been based on the cadavers of murdered Jewish concentration camp inmates.\(^7\) As a person of Jewish background who worked at the NIH at that time, I was disturbed by the presence of these books on NIH shelves. Although they remain among the most accurate anatomy studies available, and could be useful to NIH scientists pursuing important research, there was something deeply disturbing about the thought of a modern researcher blandly utilizing information resulting from wicked deeds.


\(^7\) For a review of the background of this controversy, see F.B. Charatan. Anatomy Textbook has Nazi Origins. *British Medical Journal* 1996; 313: 1422.

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Immediately, two very different considerations arise. The first is primarily an emotional concern, which I will call the issue of ‘moral contagion.’ A second issue concerns the causal connection between the use of goods produced through evil and the encouragement of wrongdoing in the future. The latter issue is more important because it furnishes the most compelling reasons for our concern with ‘moral contagion’ and is also much more accessible to the kinds of reasoned assessment needed for publicly commendable moral arguments.

The issue of moral contagion involves a repugnance to involvement or contact with things closely connected with wicked acts. Just to pick up a tome containing intimate depictions of the bodies of people murdered by the Nazis, I feel, is to make myself an accessory to the cruel deeds. Using these volumes for study or research, I might even find my character called morally into question as I place immediate benefit before respect for the victims’ suffering.

While these reactions are understandable, they are highly emotional and somewhat opaque to analysis, expressing my horror at evil deeds more than representing any sustainable reasoned position about the use of these materials. When asked whether I believe this anatomy text should be removed from the shelves, I feel equally repelled. Surely, nothing is to be gained by suppressing knowledge. These conflicting judgments suggest that my reaction is more an expression of an emotional revulsion than a basis for recommendations to others or myself about appropriate conduct.

The second issue, that of moral encouragement, differs greatly. Here concerns exist that rise to the level of publicly sustainable judgments and recommendations, since the matters at issue necessarily affect us all. Everyone has a stake in opposing forms of benefiting from evil that encourage the further commission of evil deeds.

There seem to be three ways that individuals who make use of goods produced by wrongdoing might encourage the commission of evil deeds. First, there is direct encouragement through agency. I may be reluctant to commit a wrongful deed myself, preferring instead to ask someone else to do it. Consequentially, I benefit from my agent’s wrongdoing, without an immediate role in the performance of the wrongful deeds.

One who knowingly and intentionally uses an agent is a major cause of the wrongdoing, and cannot escape responsibility or blame by apparent non-involvement. Indeed, to spare employers of agents’ blame and punish only their agents would multiply the
number of wrongdoers by encouraging powerful individuals to enlist others to their purposes.

In the stem cell arena, our moral opposition to agency encouragement explains why those who oppose the destruction of early embryos cannot allow themselves to benefit from stem cell lines made to order from embryos created for that purpose (through the deliberate fertilization of an egg) or therapeutic cloning research. The former technology has been proposed as a way of improving the likelihood of immunological compatibility in the resulting stem line since gamete donors can be recruited with this consideration explicitly in mind, perhaps from among family members; the latter promises a nearly direct tissue match since the nuclear DNA of the cell line recipient is used to create the cloned embryo. In both these cases, the beneficiary of these cell lines knowingly and intentionally instructs another person (a clinician or researcher) to create and then kill an embryo. Because of its direct causal tie to what they regard as wrongdoing, people like the Smiths can never accept this kind of benefiting.

A second kind of encouragement involves what I call direct encouragement through the acceptance of benefit. No agency relationship need exist. One person independently undertakes an evil deed, and, for whatever reason, a second person experiences some benefit as a result. Instead of foregoing the benefit (and criticizing or calling for punishment of the wrongdoer), the second person enjoys the benefit and ignores the wrongdoing. Such toleration then encourages the first person to repeat the wrongful deed. In these cases the wrongdoer may receive material or psychic rewards afterward from those that he has benefited.

There are many examples of this kind of encouragement. In business, managers sometimes cut ethical corners in ways that not only benefit the individual malefactor but also contribute to a company’s profits. If supervisors choose to enjoy these benefits and fail to discipline the rogue manager, they encourage similar behavior in the future. No agency need be involved here: no one has instructed the unethical manager to act in a wrongful fashion. But a boss who fails to discipline the subordinate and chooses to enjoy revenues produced in this way condones such behavior and encourages its repetition in the future. It is not hard to see why this kind of benefiting from others’ wrongful

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deeds is morally objectionable and inadmissible. Although less pernicious than wrongdoing through agency, it provides a powerful incentive for misconduct.

A third and final kind of encouragement I call indirect encouragement through the legitimization of a practice, or practice encouragement for short. Like direct encouragement through the acceptance of benefit, no agency need be involved. However, practice encouragement does not require the existence of an identifiable wrongdoer or wrongdoers who are encouraged to repeat their wrongful deeds as a result of one’s acceptance of the benefits of their misconduct. It is not the immediate impact of one’s acceptance on identifiable wrongdoers that concerns us in this case, but the future impact on people generally of the public rule of conduct that is created by one’s acceptance of the benefits of wrongdoing.

The best example of practice encouragement arises in connection with the use of the research results produced by Nazi doctors through the abuse and murder of concentration camp inmates. Assuming that some of this data has value (albeit much less than one would expect because of shoddy science and poor research designs), why should researchers today not use that information to improve health or save human lives? There is no question of encouraging Dr. Mengele and his associates to further evil deeds. What troubles us here is not direct encouragement through the acceptance of benefit but practice encouragement. Using this data establishes and legitimizes an undesirable public rule. That rule can be stated somewhat as follows:

Researchers may use scientific information that has been created by wicked research on human subjects so long as 1) the information can benefit humanity and 2) there is no chance that those who created the information will be encouraged to repeat their deeds.

As a Kantian moral philosopher, I believe that moral reasoning always and often centrally involves a critical evaluation of the implications of the public rules we establish by our conduct.9 These implications must be taken into account regardless of whether our behavior is actually made public. To say that a form of conduct is ethically acceptable is to say that the practice it

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embodies is one that all moral agents *could* reasonably accept as a rule for everyone. I do not have to develop this view fully, however, to suggest its applicability to the case at hand. A current-day researcher who chooses to use Nazi data sends the message to (‘establishes a public rule for’) all future researchers that their findings will be used regardless of whether or not they were produced in accordance with the moral principles governing human subjects research so long as those findings can benefit humanity.

Clearly, public awareness of this rule might in the future lead some unscrupulous researchers to ignore human subjects’ restraints to facilitate their research. They may even be willing to endure short-term criticism or punishment for their conduct in order to achieve perpetual renown. Accordingly, this public rule is *prima facie* morally questionable. This is not to say that data produced this way may never be used. The unacceptability of this rule establishes only the *prima facie* wrongfulness of the conduct, not its absolute wrongfulness in all circumstances. Depending on the totality of considerations, some degrees of benefit might warrant creating a practice with such additional negative implications.\(^{10}\) Nevertheless, establishing this *prima facie* wrongfulness is important. It helps explain our intuition that the use of such data is wrong even when specific wrongdoers who created the data are incapable of repeating their deeds. It shows why some benefits may be wrong to accept even in circumstances where we do not (or cannot) directly encourage the wrongdoers who created them, for in so doing we implicitly legitimize a morally repellent practice.

As obvious as this matter of indirect encouragement through the legitimization of a practice is, some commentators on the issue of benefiting from evil have missed it. Grappling with her valid intuition that it is wrong to use Nazi data, but observing that there is no longer any question of encouraging Nazi researchers, Kaveny concludes that what is objectionable in these cases is the self-reflexive impact of such use on our moral character.\(^{11}\) This analysis, however, misses the public rule dimensions of moral conduct.

\(^{10}\) Something like this practice consideration plays a role in the concern with ‘moral scandal’ found in Catholic moral theology. Like the negative implications of a practice, however, scandal poses only a *prima facie* consideration against a form of conduct that must be weighed against the possible benefits of that conduct. See L.G. Miller, *op. cit.* note 2, pp. 1112–1113.

\(^{11}\) Kaveny, *op. cit.* note 4, p. 289.
In the area of stem cell research and therapy this third type of encouragement seemingly has very negative implications for most uses of hESCs by those opposed to embryo destruction. Since the community of scientists and medical personnel involved in converting existing frozen embryos into hESC lines is continuously active now and in the future, the second and third types of encouragement effectively collapse into one. Any enjoyment of medical benefits created by hESC therapies seems to encourage those who are now producing hESC lines as well as those in the future who might do the same.

People sometimes try to avoid the woeful practice implications of some form of conduct by carefully tailoring the practice they are legitimizing. In the stem cell arena, a good example is afforded by President George W. Bush’s August 9, 2001 decision authorizing NIH funding for research on the estimated sixty hESC lines then in existence. Justifying his decision, the president described these lines as those on which ‘the life and death decision has already been made.’ Simultaneously, the president expressly forbade utilization of any hESC lines created after that date. By crafting this policy, the president may have sought to ease his own moral qualms about the destruction of embryos and forestall objections from his right-to-life political supporters. He may have reasoned in the following way: ‘Although the benefits produced by NIH-funded stem cell research might encourage people to destroy more embryos to create hESC lines, the absolute prohibition that I have enunciated on utilization of any lines created in the future prevents that from happening. Thus, I have created a policy that permits us to enjoy the benefits of previous wrongful deeds, without encouraging in any way the repetition of similar deeds in the future.’

Conservative critics immediately expressed dissatisfaction with the president’s decision, fearing encouragement to embryo destruction as medical cures generate new pressure for the creation of stem cell lines. Bush’s policy is also not immune to the charge that it indirectly encourages embryo destruction through the legitimization of a practice. To understand this, consider the rule implicit in the president’s decision:

When an embryo has been killed, its cells may permissibly be used in beneficial research so long as no further destruction of living embryos is allowed.

This rule sets up a moral quandary for future presidents (or for the same president in a future decision). It is likely that, eventually, additional hESC lines may be needed to continue beneficial research or therapy and that private researchers or clinicians will have created many additional hESC lines. It will then be very attractive for a president to reason, ‘The life and death decision had already been made. Refusing to use these cells will not bring the embryos back and it will needlessly cause people to suffer from diseases that can be cured.’ In the light of attractive benefits and the absence of immediate harms, the only obstacle to using these lines is the prior commitment not to, which will not necessarily bind future administrations. To ease concerns, a future president may insist that no use will be made of lines created after the date of his new decision. However, this merely repeats the pattern of reasoning that led to the renewed decision. Small wonder that some right-to-life critics expressed dismay over the president’s seeming exception to the strict ban they were seeking.

Do these three considerations explain our opposition to benefiting from evil? Consider a case where none of these three forms of encouragement is present. A teenager has suffered brain death in the hospital after being grievously wounded in a ‘drive by’ gang shooting, and the dead teen’s parents authorize the donation of their child’s organs to needy recipients. Could Jessica’s parents be faulted in any way if they chose to accept this offer? It seems not. There appears to be no compelling reason for wasting this precious lifesaving resource. None of our three forms of encouragement are present in this case. Certainly, no agent encouragement is involved, nor is there reason to believe that the use of the dead teen’s organs will either directly encourage or in any way indirectly legitimize gang violence, the causes of which lie elsewhere. This leaves only the possible concern of moral contagion, in this case a feeling of repugnance that the life of a loved one might be saved by another person’s tragic death. However, in view of the absence of any of the three forms of encouragement, both the deceased child’s parents and the surviving child’s parents could as well experience emotional uplift in being able partly to redeem a tragic loss.

Unlike this use of a donated organ, benefiting from an hESC line appears to violate two, and in some cases, all three of these encouragement considerations. As such, it seems that there is no way that Roman Catholic parents like the Smiths can morally justify the use of such cells in the treatment of their daughter. Nevertheless, with an understanding of the realities of hESC
production, I believe some people in the Smith’s position could possibly authorize the use of hESC lines without involving themselves in any of the three forms of encouragement I have identified.

The key insight here is that, at least at the present time and foreseeable future, embryo destruction is entirely independent of hESC research and therapy. Surplus embryos are routinely created in the practice of infertility medicine, where they result from current hyperstimulation regimes. This will not change until the distant future, when it may be possible reliably to produce a pregnancy from a single fertilized egg. Until then, thousands of embryos will be produced each year in hundreds of infertility clinics around the world, and, eventually, many of those embryos will be destroyed when couples are no longer willing – or available – to pay for the embryos’ continued cryopreservation. In 1996, over 3,600 frozen embryos were destroyed by law in Great Britain when the couples from whom they were created no longer authorized their preservation.13

There need be no causal connection, therefore, between the use of hESC lines derived from these stored embryos and the embryo creation and destruction that makes those lines available. In view of this, none of our three types of encouragement need occur when someone uses an hESC line. Do those who use hESC lines employ as agents those who destroy the embryos needed to create them? Not unless they expressly authorize the creation of an embryo for this purpose. Does using an hESC line indirectly encourage progenitors (or clinicians or researchers working with them) to authorize the destruction of an embryo? No, because this destruction is undertaken for separate and independent reasons and will likely continue to be so. Does use of hESC lines indirectly encourage such destruction by creating a practice that legitimizes the destruction of human embryos in the future? Some parents and clinicians may be encouraged to create and destroy embryos by regarding their beneficial uses, but, whatever some people choose to do, the massive creation and destruction of embryos will continue. Without these forms of encouragement, the Smith’s use of hESC lines for their daughter is morally closer to their use of a pancreas donated by the parents of a teen murdered in gang violence than it is to anything approximating encouragement to murder. In both cases, although one may abhor the deeds that led to this biological material becoming

available, one can use it without incurring any encouragement responsibility.

Some might say that although those who use hESC lines do not encourage embryo destruction, they do encourage their destruction in a particular way. Normally, embryos are disposed of by being exposed to alcohol or a similar agent and then incinerated. But when a blastocyst is to be used as a source of hESCs, it is kept alive until immunosurgery procedures are applied to it in order to dissolve the trophoblast and expose the inner cell mass. Does not the use of hESCs therefore either indirectly encourage or legitimize this practice? And does not this practice make the use of hESC different from even the use of tissue from aborted fetuses, where the end use of the tissue usually has little or no bearing on the means by which a fetus is killed? John C. Fletcher expresses this view when he maintains that, in moral terms, the major difference between embryonic germ cell research (where the pluripotent stem cells are derived from aborted fetuses) and embryonic stem cell research is that in embryonic germ cell research ‘the abortion causes the death of the fetus, and [in hESC research] the research causes the death of the embryo.’

I believe that Fletcher misstates the issue: hESC research using any of the thousands of embryos slated for destruction does not cause the death of those embryos; the decision to discard them does that. Research causes only the manner of their destruction; however, we can see that this is morally unimportant. Embryos used to produce hESC lines are tiny clusters of largely undifferentiated cells that have no ability to feel or think. While the manner of killing a human child or adult is morally relevant (it certainly seems worse to kill someone by dissecting them while they are alive than, say, by administering them a lethal injection), this is not true for early human embryos. The wrongs here (if any) are the termination of their life and their ability to develop further. As a consequence, although hESC research does cause the destruction of embryos in one way rather than another, closer inspection shows this to be a morally unimportant consideration and not grounds for faulting someone whose use of hESC lines encourages it.

In conclusion, given certain assumptions, it may be possible in the future for even the staunchest opponents of human embryo

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destruction in good conscience to use hESC lines for research or therapeutic purposes. The key assumption is that the destruction of the embryos needed for this purpose has occurred (or will continue to occur) unless infertility procedures change. For those opposed to embryo destruction, this excludes the use of embryos deliberately created for this purpose, whether by sexual fertilization or cloning.

This analysis is also based primarily on our concern with benefiting from evil where this raises the issue of encouragement to evil; the issue of concern with moral contagion is deliberately downplayed. Some opponents of embryo destruction may nevertheless shrink from using hESC lines out of fear that they will somehow morally contaminate themselves. However, others who share their views may conclude that the benefits of using hESC lines outweigh whatever moral taint is incurred. Both of these positions are understandable, but neither is necessarily more compelling. Perhaps, in the future the Smiths may be among the many people opposed to embryo destruction who regard themselves as acting ethically when they choose to benefit from hESC research.

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